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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,671	10/30/2003	Sumit Roy	200313242-1	3556

22879 7590 02/18/2009

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EXAMINER	
CHANG, JULIAN	
ART UNIT	PAPER NUMBER
2452	

NOTIFICATION DATE	DELIVERY MODE
02/18/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/698,671	ROY ET AL.	
	Examiner	Art Unit	
	JULIAN CHANG	2452	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18 and 26-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18 and 26-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Office action is responsive to communication filed on 12/02/08. Claims 1-40 are pending, and have been examined below.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-3, 6, 8, 10-12, 14, 16, 18, 33, 34 and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pub. No. 2003/0158913 ("Agnoli"), and further in view of U.S. Pat. No. 7,171,206 ("Wu").

3. Regarding claims 1 and 33, Agnoli teaches a method comprising:

identifying a type of service to be performed on an item of content, wherein said item of content is identified during a request involving a client device (Agnoli: para. [0027]);

using an estimate of resources associated with performing said service to select a provider from a plurality of providers capable of performing said service (Agnoli: 'considers the processing load that will be created by the transcoding task', para. [0029]); and

providing information for transferring said request to said provider, wherein said provider performs said service on said item of content upon being transferred said

request (Agnoli: 'initiates a transcode task at a transcoding server', para [0085]; '…then performs the transcode task in the manner specified…' para. [0086]).

Agnoli fails to teach transferring a session. Wu teaches transferring a session for transcoding purposes (abstract). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to transfer sessions instead of requests as taught by Wu in order to increase efficiency.

4. Regarding claims 11 and 37, Agnoli teaches a method comprising:

identifying a type of service to be performed on an item of content, wherein said item of content is identified during a request involving a client device (Agnoli: 'specifies one of several types of processing, depending on the media content requested', para. [0027]);

maintaining a record comprising resources associated with a plurality of providers capable of performing said service (Agnoli: 'maintain accurate load values for all servers', para. [0098]; see also paras [0094]—[0104]); and

selecting a provider from said plurality of providers based on information in said record (Agnoli: 'allocation of the transcoding task to a particular transcoding server…', para. [0096]; see also paras [0094]—[0104]), wherein said request is transferred to said provider, wherein data for said item of content are streamed from a source to said provider and wherein service result data are streamed from said provider to said client device (Agnoli: 'Source media content is obtained from an origin server...', para [0085]; 'resulting transcoded media content is then sent to a distribution server…passes the

transcoded media content to publishing…which forwards the transcoded media content to client', para. [0086]).

Agnoli fails to teach transferring a session. Wu teaches transferring a session for transcoding purposes (abstract). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to transfer sessions instead of requests as taught by Wu in order to increase efficiency.

5. Regarding claims 2 and 14, Agnoli-Wu teaches the invention substantially as claimed and described in claims 1 and 11 above, including estimating computational resources associated with performing a service (Agnoli: 'CPU load', para. [0097]).

6. Regarding claims 3 and 34, Agnoli-Wu teaches the invention substantially as claimed and described in claims 2 and 33 above, including:

maintaining a record comprising resources available at each provider (Agnoli: 'record …statistics on their load (e.g., average CPU load, maximum CPU load) into a database', para [0097]); and

selecting said provider according to said record (Agnoli: 'allocation of the transcoding task to a particular transcoding server…', para. [0096]; see also paras [0094]—[0104]).

7. Regarding claims 6, 16, 36 and 39, Agnoli-Wu teaches the invention substantially as claimed and described in claims 1, 11, 33 and 37 above, including:

maintaining a record comprising providers to which sessions have been transferred (Agnoli: 'tracks the state of new tasks…calculates server load as the measured current sever load plus the load estimate for each of the newly allocated tasks on that transcoding server', para. [0099]); and

selecting said provider according to said record (Agnoli: 'allocation of the transcoding task to a particular transcoding server…', para. [0096]; see also paras [0094]—[0104]).

8. Regarding claims 8 and 18, Agnoli-Wu teaches the invention substantially as claimed and described in claims 1 and 11 above, including receiving an indication from a provider that a service is completed (Agnoli: 'Upon completion…', para. [0097]).

9. Regarding claim 10, Agnoli-Wu teaches the invention substantially as claimed and described in claim 1 above, including identifying a source of an item of content, wherein data for said item of content are streamed from said source to a provider and wherein service result data are streamed from said provider to a client device (Agnoli: 'Source media content is obtained from an origin server...', para [0085]; 'resulting transcoded media content is then sent to a distribution server…passes the transcoded media content to publishing…which forwards the transcoded media content to client', para. [0086]).

10. Regarding claims 12 and 38, Agnoli-Wu teaches the invention substantially as claimed and described in claims 11 and 37 above, including:

estimating resources associated with performing a service (Agnoli: 'considers the processing load that will be created by the transcoding task', para. [0029]; see also para. [0097]); and

updating a record to reflect a change in resources associated with said provider based on said provider performing said service (Agnoli: 'tracks the state of new tasks…calculates server load as the measured current sever load plus the load estimate for each of the newly allocated tasks on that transcoding server', para. [0099]).

11. Claims 4, 5, 15 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agnoli-Wu as applied to claims 1, 11 and 33 above, and further in view of U.S. Pat. No. 6,421,733 ("Tso").

12. Regarding claims 4, 5, 15 and 35, Agnoli-Wu teaches the invention substantially as claimed and described in claim 1, 11 and 33 above, but fails to teach selecting a provider based on the estimated bandwidth associated with a session and the amount of bandwidth available at each provider. However, Tso teaches selecting a service provider based on bandwidth (Col. 7, lines 15-67).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to allocate content delivery resources based on bandwidth as taught by Tso in order to account for any bandwidth guarantees.

13. Claims 7, 17 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agnoli-Wu as applied to claims 1, 11 and 37 above, and further in view of U.S. Pub. No. 2003/0046396 ("Richter").

14. Regarding claims 7, 17 and 40, Agnoli-Wu teaches the invention substantially as claimed and described in claim 1, 11 and 37 above, but fails to teach estimating the duration of a session. However, Richter teaches load-balancing content delivery resources based on the duration of an event (Para. [0262]).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to allocate content delivery resources based on the duration of an event as taught by Richter in order to account for the duration of time resources will be in use.

15. Claims 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agnoli-Wu as applied to claims 1 and 11 above, and further in view of U.S. Pat. No. 6,407,680 ("Lai").

16. Regarding claims 9 and 13, Agnoli-Wu teaches the invention substantially as claimed and described in claim 1 and 11 above, but fails to teach redirecting a client to a provider. However, Lai teaches redirecting a viewer client to the appropriate server from which to receive the requested media content (Col. 9, lines 1-15).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to redirect a client to a streaming server as taught by Lai in order to stream media directly, thereby reducing transmission time.

17. Claims 26-30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agnoli-Wu, and further in view of Tso.

18. Regarding claim 26, Agnoli-Wu teaches a system comprising a service manager for selecting a provider from a plurality of providers, each provider capable of performing a service on an item of content, wherein said service manager maintains a record comprising resources associated with said providers (paras [0094]—[0104]) and wherein said service manager uses an estimate of resources associated with performing said service to select said provider according to information in said record (para. [0029]), wherein data for said item of content are streamed from a source to said provider and wherein service result data are streamed from said provider to said client device (paras [0084] - [0086]).

Agnoli fails to teach receiving a request for an item of content from a portal, wherein said portal received said request from said client device. However, Tso teaches receiving a request at a portal from a client device (Col. 9, line 49-65).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use a portal as taught by Tso in order to provide a client device an interface to access a server.

19. Regarding claim 27, Agnoli-Wu-Tso teaches the invention substantially as claimed and described in claim 26 above, including updating a record to reflect a change in resources associated with a provider based on said provider performing a service (Agnoli: para. [0099]).

20. Regarding claim 28, Agnoli-Wu-Tso teaches the invention substantially as claimed and described in claim 26 above, including estimating computational resources associated with performing a service (Agnoli: para. [0097]).

21. Regarding claim 29, Agnoli-Wu-Tso teaches the invention substantially as claimed and described in claim 26 above, including selecting a service provider based on bandwidth (Tso: Col. 7, lines 15-67).

22. Regarding claim 30, Agnoli-Wu-Tso teaches the invention substantially as claimed and described in claim 26 above, including maintaining a record comprising providers to which sessions have been transferred (Agnoli: para. [0099]).

23. Regarding claim 32, Agnoli-Wu-Tso teaches the invention substantially as claimed and described in claim 26 above, including receiving an indication from a provider that a service is completed (Agnoli: para. [0097]).

24. Claim 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agnoli-Wu-Tso as applied to claim 26 above, and further in view of Richter.

25. Regarding claim 31, Agnoli-Wu-Tso teaches the invention substantially as claimed and described in claim 26 above, but fails to teach estimating the amount of time for a provider to perform a service. However, Richter teaches load-balancing content delivery resources based on the duration of an event (Para. [0262]).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to allocate content delivery resources based on the duration of an event as taught by Richter in order to account for the duration of time resources will be in use.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 6-8, 10, 11, 13, 16-19, 23-26, 30-33, 36, 37, 39 and 40 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 8-10, 13, 14, 16, 29, 30, 31-34, 38, 39 and 41 of copending Application No. 10/698,810 in view of Agnoli. The instant application differs from the '810 application in that the instant application uses an estimate of resources associated with performing a service to select a service provider. This difference is renedered obvious in view of Agnoli as shown above.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

26. Applicant's arguments filed 12/02/08 have been fully considered but they are not persuasive.

a. Applicant argues that Agnoli does not transfer a session, and therefore, Agnoli teaches away from transferring a session. (Remarks 4). Applicant goes on to argue that since Agnoli teaches away from transferring a session, Agnoli must teach away from combination with Wu, which teaches transferring a session. (Remarks 5).

Applicant's arguments are not persuasive. As was conceded in the previous Office action, Agnoli does not teach transferring a session. However, this does not equate to "teaching away". To teach away, a reference must actually teach something that is contrary to the claimed invention. Agnoli is

simply silent as to the transferring of sessions. Moreover, one of ordinary skill in the art would easily be able modify Agnoli to transfer sessions. This is evidenced by the fact that Wu teaches a transuding system that transfers a session. The fact that someone in the art has done it is evidence that one of ordinary skill in the art would know how to do it.

b. Applicant argues that the combination of Agnoli and Wu would change the principle operation of Agnoli. (Remarks 6). Applicant argues that "it is the intended purpose of Agnoli to maintain contact with the client while providing the desired media content". (Id.) In particular, applicant argues that Agnoli "performs transcoding...in a manner that is transparent to the content provider as well as the viewer of the media content", and that combination with Wu would "thus chang[e] the principle of operation of Agnoli". (Id, emphasis in original).

It appears that applicant has not read Wu. In the abstract (that was explicitly cited in the previous Office action), Wu discloses that "[t]he transfer operation is transparent to the content server, so session between mobile device...and content server...stays intact". (Abstract, emphasis added). Wu goes on to teach that the "relaying of the communication session is then transferred from the first transcoding proxy to the second transcoding proxy, which completes the transfer, and is transparent to the user of the mobile device". (Col. 2, lines 35-58, emphasis added). Clearly, any combination of Agnoli with Wu would not change the principle of operation of Agnoli as understood by applicant.

c. Any argument not expressly addressed herein has been rendered moot.

Conclusion

27. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JULIAN CHANG whose telephone number is (571)272-8631. The examiner can normally be reached on Monday thru Friday 9AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. C./
Examiner, Art Unit 2452

/Kenny S Lin/
Primary Examiner, Art Unit 2452